

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID AND MARTINE MEDNANSKY,

Plaintiff,

vs.

U.S.D.A. FOREST SERVICE
EMPLOYEES WILLIAM METZ, OWEN
C. MARTIN, RANDY MOORE, RITU
AHUJA, MARLENE FINLEY, AND
DONNA GROSZ,

Defendant.

CASE NO. 09cv1478-LAB (CAB)

**ORDER REJECTING MOTION
FOR LEAVE TO AMEND; AND**

**ORDER RE: DECEMBER 14, 2009
HEARING ON MOTION TO
DISMISS**

I. **Motion for Leave to File Amended Complaint**

Currently pending before this Court and scheduled for hearing on December 14, 2009 is Defendants' motion to dismiss the complaint, which was filed September 1, 2009. On December 3, 2009, Plaintiffs submitted an amended complaint for filing. On December 4, 2009, without obtaining a hearing date, Plaintiffs submitted a noticed motion (the "Motion to Amend") for leave to file the amended complaint they had submitted the day before. The Motion to Amend is attached as an appendix to this Order.

Civil Local Rule 7.1(b) provides: "All hearing dates for any matters on which a ruling is required shall be obtained from the clerk of the judge to whom the case is assigned." Plaintiffs have repeatedly ignored these requirements, and have been warned twice. In the

1 latest instance, the Court's order of November 23, 2009 warned them: "Any future attempted
2 filings that violate this rule will be rejected or stricken." The Motion to Amend is therefore
3 **REJECTED** for filing.

4 Future violations of this rule will result in the submitted documents being rejected, **and**
5 **may be punished by sanctions.** See Civil Local Rule 83.1.

6 Even if the Motion to Amend had been accepted for filing, it would have been denied
7 as untimely. To the extent Plaintiffs were trying to amend their complaint to avoid dismissal,
8 they have offered no explanation for their decision to wait nearly three months to do so.
9 Allowing them to amend at this point would result in needless delay, waste of judicial
10 resources, and an unfair burden on Defendants. To the extent Plaintiffs expect dismissal
11 will be granted and are seeking attempting to amend their complaint in anticipation of that,
12 their motion comes too early. If the motion to dismiss is granted and the complaint can be
13 saved by amendment, Plaintiffs may seek leave to amend at that point. Until then, however,
14 Plaintiffs would lack guidance about how to amend.

15 The Motion to Amend argues Plaintiffs have a right under Fed. R. Civ. P. 15 to amend
16 their complaint because, Plaintiffs contend, no responsive pleading has been filed. Until
17 December 1, 2009, they would have been correct, but under newly-effective rules, their right
18 to amend ends after 21 days following service of a motion under Rule 12(b), (e), or (f). See
19 Rule 15(a)(1)(B).

20 Furthermore, the Motion to Amend does not outline the proposed amendments or
21 explain the reasons for amendment other than generalized claims that amendment is
22 necessary. It is therefore not at all clear why allowing an amendment at this point would
23 serve the interests of justice. The submitted amended complaint is therefore being rejected
24 by a separate order.

25 **II. Hearing on December 14, 2009.**

26 Currently on calendar for Monday, December 14 at 11:15 a.m. is a hearing on
27 Defendants' motion to dismiss, which is now fully briefed. Pursuant to Civil Local Rule
28 7.1(d)(1), the Court finds this matter suitable for decision without oral argument. Accordingly,

1 the hearing on this matter is taken off calendar and this matter is taken under submission.

2 No appearances will be required in this matter on Monday, December 14, 2009.

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4 **IT IS SO ORDERED.**

5 DATED: 12-8-09

Larry A. Burns

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7 **HONORABLE LARRY ALAN BURNS**
United States District Judge

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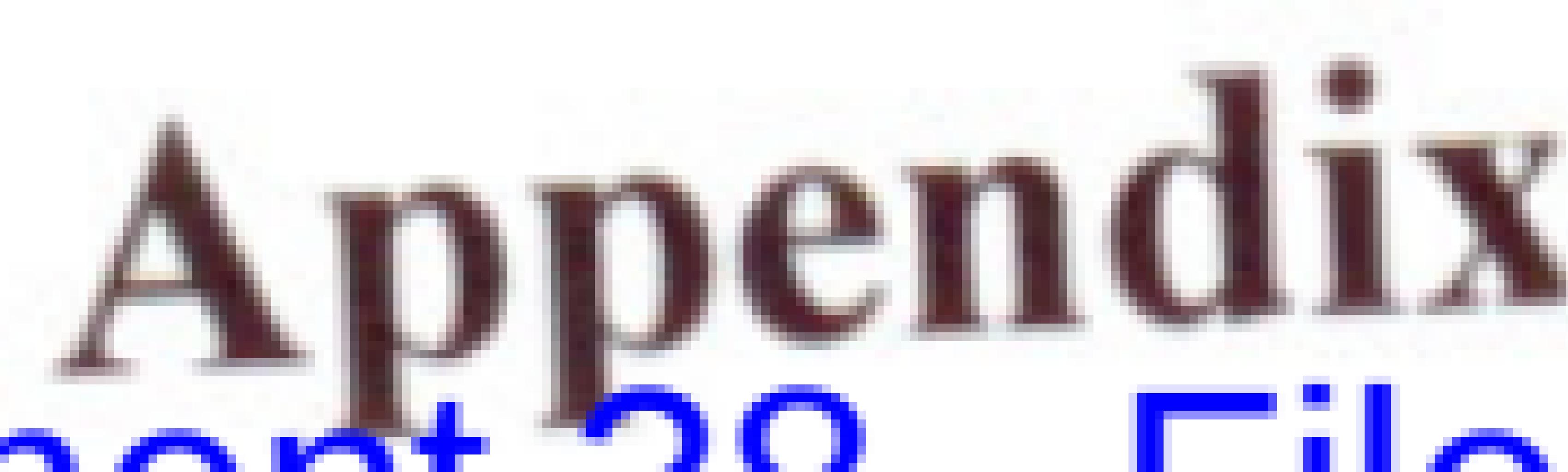
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1 David and Martine Mednansky
2 P.O.Box 940
2 Pine Valley, CA 91962
619-473-7648
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8 United States District Court
9 Southern District of California
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11 David and Martine Mednansky) Case No.09CV1478 LAB (WVG)
12 Plaintiffs,)
13 vs.) NOTICE OF MOTION AND MOTION TO
14) AMEND PLAINTIFFS' ORIGINAL
15 William Metz, Owen Martin,) COMPLAINT FOR VIOLATION OF
16 Randy Moore, Ritu Ahuja,) CONSTITUTIONAL RIGHTS
17 Marlene Finley, Donna Grosz)
18 Defendants,)
19)

20 Plaintiffs give notice of motion to amend plaintiffs'
21 original complaint for violation of constitutional rights.
22 Motion to amend is accompanied by plaintiffs' memorandum in
23 support thereof, and is accompanied by First Amended Complaint.

24
25 Respectfully submitted,

26 Plaintiff

27 David Mednansky

December 2, 2009



Plaintiff

Martine Mednansky

CR

1 David and Martine Mednansky
2 P.O.Box 940
Pine Valley, CA 91962
Phone: 619-473-7648
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8 United States District Court
9 Southern District of California
10

11 David and Martine Mednansky)
12 Plaintiffs,)
13 vs.) Case No.09CV1478 LAB (WVG)
14) PLAINTIFFS' MEMORANDUM IN
15 William Metz, Owen C. Martin,) SUPPORT OF MOTION FOR LEAVE TO
16 Randy Moore, Ritu Ahuja,) FILE AMENDED PLEADING
17 Marlene Finley, Donna Grosz)
Defendants,)
18)
19)

20 Plaintiffs request leave of court to file an amended
21 pleading, First Amended Complaint For: Violation of the United
22 States Constitution, First, Firth, and Ninth Amendments,
23 Conspiracy to Interfere with Civil Rights.

24 A. Introduction

25 1. Plaintiffs are David Mednansky and Martine Mednansky;
26 defendants are William Metz, Owen C. Martin, Randy Moore, Ritu
27 Ahuja, Marlene Finley, and Donna Grosz, federal employees.
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1 2. Plaintiffs sued defendants for violation of their
2 constitutional rights and conspiracy to interfere with
3 constitutional rights.

4 3. Defendants have not filed a responsive pleading.

5 4. Defendants have filed a motion to dismiss.

6 5. Plaintiffs have filed opposition to motion to dismiss.

7 6. Plaintiffs seek to amend their pleading to correct
8 allegations and clarify issues, and add and withdraw matters.

9 B. Argument

10 7. Unless the opposing party can show prejudice, bad faith,
11 or undue delay, a court should grant leave to file an amended
12 pleading. Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 230
13 (1962). Leave to amend should be freely given when justice so
14 requires. Fed.R.Civ.P. 15(a)(2)' Foman, 371 U.S. at 182, 83 S.
15 Ct. at 230, Nebraska v. Wyoming, 515 U.S. 1,8, 115 S.Ct. 1933,
16 1938 (1995).

17 8. The court should allow the filing of plaintiffs' amended
18 pleading because it is appropriate and necessary. See Gamma-10
19 Plastics, Inc. v. Am. President Lines, Ltd., 32 F.3d 1244, 1255-
20 56 (8th Cir. 1994). The amendment is appropriate and necessary
21 because plaintiffs are pro se litigants and therefore not
22 educated to perfect a professional pleading in the manner and
23 form required by federal courts. Moreover, as plaintiffs had
24 noted, they are under extreme duress due to the impending threat
25 to seize their home and property, as well as ongoing acts by
26 defendants that have intimidated and put fear into plaintiffs
27 during the course of this court proceeding. For these reasons
28

1 plaintiffs cognitive abilities have been interfered with and
2 thus hampered in perfecting their complaint.

3 9. Defendants will not be prejudiced by plaintiffs' amended
4 pleadings because they have not filed a responsive pleading to
5 plaintiffs' complaint, and because the nature of amendment is to
6 clarify issues and correct allegations. Phelps v. McClellan, 30
7 F.3d 658, 662-63 (6th Cir. 1994).

8 10. Adverse party will not be prejudiced by any delay that
9 plaintiffs' amended pleading may cause. Auster Oil & Gas, Inc.
10 v. Stream, 764 F.2d 381, 391-92 (5th Cir. 1985). Delay could
11 not cause prejudice because defendants have shown no interest in
12 the ENE the court suggested, nor interest in answering the
13 complaint, but have shown interest in delaying procedure to take
14 vacation for personal benefit.

15 11. Plaintiffs diligently moved to amend as soon it became
16 apparent that the amended pleading was necessary. Plaintiffs
17 became aware of the need to amend on or around the time of
18 Thanksgiving, therefore its submission now is timely.

19 12. A party may amend its pleadings once as a matter of
20 course before being served with a responsive pleading, F.R.C.P
21 15(a)(1)(A); Barbara v. New York Stock Exch., Inc., 99 F.3d
22 49,56 (2d Cir. 1996). Defendants have not filed a responsive
23 pleading therefore plaintiffs have a right as a matter of law to
24 amend their complaint at this time.

25 13. Plaintiffs are filing their amended pleading along with
26 this motion.

C. Conclusion

14. Plaintiffs submit this motion to amend, correct, clarify, add, and withdraw matters in an effort to perfect a pleading that will better reveal the issues, and in an effort to prevent motion to dismiss, so that due process may proceed without further delay. For these reasons, plaintiffs ask the court to grant leave to file the amended pleading.

Respectfully submitted,

December 2, 2009

Plaintiff

David Mednansky

Plaintiff

Plaintiff

Martine Mednansky

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID MEDNANSKY et al.,
Plaintiffs,
vs.
William Metz et al.,
Defendants,

) Case No.: 09CV1478 LAB (WVG)
) DECLARATION OF SERVICE
) Person served: U.S. Attorney
) Southern District of California
) Date: December 2, 2009
)

I, the undersigned declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; that I served the above defendant, the following documents:

Plaintiffs' notice motion and memorandum in support of Amended Complaint and First Amended Complaint, by placing in the U.S. mail, with postage fully prepaid, at San Diego California on December 2, 2009 addressed to: U.S. Attorney Southern District of California, Federal Office Building 880 Front Street, Room 6293, San Diego, CA 92101-8893.

Dated this day: December 2, 2009

David F. Reed

**Jim Jackson
6035 Lake Murray Blvd.
La Mesa, CA 91942-2506**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DAVID MEDNANSKY et al.,
Plaintiffs,
vs.
William Metz et al.,
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) Case No.: 09CV1478 LAB (WVG)
) DECLARATION OF SERVICE
) Person served: Clerk of the
) Court Southern District of
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) Date: December 2, 2009
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Dated this day: December 2, 2009

David Freed

**Jim Jackson
6035 Lake Murray Blvd.
La Mesa, CA 91942-2506**